

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
SEVENTEENTH DIVISION**

**BEN MOTAL**

**PLAINTIFF**

**V.**

**CASE NO. 60CV-19-184**

**CITY OF LITTLE ROCK**

**DEFENDANT**

**DEFENDANT'S MOTION TO DISMISS  
PURSUANT TO ARK. R. CIV. P. 12(b)(6)**

Comes now, the Defendant, City of Little Rock, by and through his attorneys, Tom Carpenter, City Attorney, and Andrew Middlebrooks, Assistant City Attorney, and for its Motion to Dismiss Pursuant to Ark. R. Civ. P. 12(b)(6) states as follows:

1. On January 11, 2019, Plaintiff filed his complaint against the Defendant, City of Little Rock ("City"), alleging a violation of the Arkansas Freedom of Information Act ("FOIA") as codified under Ark. Code Ann. § 25-19-105.

2. Plaintiff alleges that he was the victim of a hit-and-run car accident on October 27, 2018 and an accident report was created for the incident by the Little Rock Police Department.

3. Plaintiff alleges, with no specific facts or details as far as any date or time, that he visited the Little Rock Police Department headquarters. Plaintiff further alleges that said purpose was to inspect and copy the accident report. *See* Plaintiff's Complaint ¶ 9.

4. Plaintiff alleges that he was allowed to inspect and view the accident report that he was wanting to view, but was denied the ability to take video or pictures of the report using his cell phone. Instead, Clem Tate offered him a copy of the report for \$10.00.

5. Plaintiff states that he “advised Ms. Tate of his right to copy the report with his own device” and that Plaintiff refused to pay \$10.00. *See* Plaintiff’s Complaint ¶ 9.

6. Ark. Code Ann. § 25-19-105(a)(1)(A) states “except as otherwise specifically provided by this section or *by laws specifically enacted to provide otherwise*, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.” (Emphasis added).

7. The failure of the Plaintiff’s complaint to state a date or time or even an approximation is a generalization that requires the complaint to be dismissed under Ark. R. Civ. P. 12(b)(6). It precludes the Court to entertain any FOIA analysis since FOIA allows inspection during “regular business hours” and it precludes the Defendant of the ability to raise affirmative defenses with regards to statute of limitations. Ark. Code Ann. § 25-19-105(a)(1)(A).

8. The legislature has enacted a law that specifically provides and dictates the costs of accident reports, creating an exception or pre-emption to FOI, which dictates actual costs of production<sup>1</sup>. *See* Ark. Code Ann. § 27-53-210(b)(1).

9. The legislature enacted Ark. Code Ann. 27-53-210(b)(1) and it states, “in order to partially reimburse the Department of Arkansas State Police for the cost of making

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<sup>1</sup> Ark. Code Ann. § 25-19-105(a)(3)(A)(i) Except as provided in § 25-19-109 *or by law*, any fee for copies shall not exceed the actual costs of reproduction, including the costs of the medium of reproduction, supplies, equipment, and maintenance, but not including existing agency personnel time associated with searching for, retrieving, reviewing, or copying the records. (Emphasis added)

photostatic or written copies of motor vehicle accident reports and copies of records of traffic violations, there shall be charged a fee of ten dollars (\$10.00) for each copy of a basic accident report and a fee of one dollar fifty cents (\$1.50) per page for each copy of a supplemental report.”

10. Further, although Plaintiff comes to a legal conclusion that he was asking for the records pursuant to FOIA, he never factually alleges or pleads in his complaint that he requested the records under FOIA or that he told Ms. Tate that he was even an Arkansas resident without any felony conviction who is able to make a FOIA request, as required under Ark. Code Ann. § 25-19-10.

11. By the Plaintiff's own admissions, he was never denied access to the records he requested and was provided both the opportunity to inspect and an opportunity to copy said record as provided by Ark. Code Ann. § 25-19-105(a)(3)(A)(i) at an amount dictated by Ark. Code Ann. § 27-53-210(b)(1).

12. Plaintiff bases his entire complaint on the inability to take a picture on his phone of an official City record and such a basis is not provided or required in Ark. Code Ann. § 25-19-10.

**WHEREFORE**, Defendant, City of Little Rock, prays that this Court dismiss the Plaintiff's Complaint with prejudice against it for its failure to state a claim in which relief can be granted in accordance with Ark. R. Civ. P. 12(b)(6), and for all other just relief in which they may be entitled.

Respectfully submitted,  
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City Attorney

/s/ Andrew Middlebrooks  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 25, 2019, I electronically filed the foregoing with the Clerk of Court using the eFlex Electronic Filing System, which shall send notification of such filing to Ben Motal at the email address of ben@motallaw.com.

/s/ Andrew Middlebrooks  
Andrew Middlebrooks